

Application Serial No. 10/619,721  
Amendment dated November 26, 2008  
RCE reply to final office action of June 27, 2008

## REMARKS

Claims 1-52 are pending in the instant application. Of these, claims 14, 18, 32, 36 and 41-46 are withdrawn. Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are under consideration, and stand rejected as final. Claims 1, 19, 43, 44 and 51 have been amended. Applicant respectfully requests reconsideration in view of the following remarks.

Applicant respectfully submits that the instant amendments are proper at the present stage of prosecution. Specifically, the amendments are offered in the context of a Request for Continued Examination (RCE). Accordingly, Applicant respectfully requests that the finality of the rejection be withdrawn, and that prosecution of the instant application resume.

Applicant respectfully submits that the amendments to the claims are fully supported by the specification as originally filed, either expressly or implicitly. In particular, paragraphs providing such support include the second complete paragraph in the "Summary of the Invention", the first paragraph in the "Detailed Description of the Preferred Embodiments", and the paragraph bridging pages 20 and 21.

To briefly review, the present invention is directed to a medical device that fixes in place one or more tissues (such as bone) of a living body. The device, although porous, is sufficiently rigid as to prevent the fixed tissues from shifting during the healing process. It is desirable to be able to contour or shape the device to some desired conformation, and to be able to hold or maintain that new shape. Accordingly, at least a portion of the pores are designed to at least partially but irreversibly collapse during the shaping process. In doing so, the device will not crack or fail catastrophically, but instead can be smoothly bent, as a radius curve will form at the bend. Among the advantages of the claimed "pore collapsing technique" is the ability to deform the device to the desired shape at room temperature. Many prior art devices require heating above the polymer's glass transition temperature to be able to permanently deform the polymer material to some desired shape.

### Claim Rejections – 35 USC §102

Claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 are rejected under 35 U.S.C. §102(b) as being anticipated by European Patent Publication No. EP 0 562 864 A1 to Rosenthal (hereinafter referred to as "Rosenthal"). Applicant respectfully traverses this rejection.

Applicant respectfully submits that Rosenthal does not disclose, either expressly or implicitly, the claimed tissue fixation device that, at room temperature, is capable of being bent and possesses the inherent property of being able to maintain the bent shape once the bending forces are removed. In contrast, the Rosenthal material is stated as being "resilient enough to resist collapse" (col. 4, lines 26-29).

Thus, claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52 should now be in condition for allowance.

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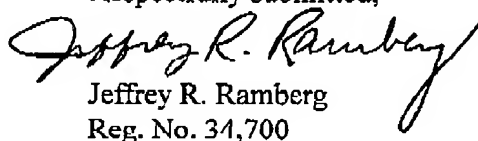
### Rejoinder

Withdrawn claims can be rejoined if they are species of an allowable genus claim. Withdrawn claims 14, 18, 32, 36 and 41-46 are either dependent from, or have been amended to include all of the limitations of independent claim 1. As Applicant respectfully submits that claim 1 is in allowable condition, and being that the withdrawn claims are a species of this allowable genus claim, the withdrawn claims therefore should be in condition for rejoinder, and such is respectfully requested.

In view of the above remarks, Applicant respectfully submits that the instant application is in condition for allowance. Accordingly, Applicant respectfully requests issuance of a Notice of Allowance directed to claims 1-13, 15-17, 19-31, 33-35, 37-40 and 47-52. Applicant furthermore requests that claims 14, 18, 32, 36 and 41-46 be rejoined.

Should the Patent Office deem that any further action on the part of Applicant would be desirable, the Office is invited to telephone Applicant's undersigned representative.

Respectfully submitted,

  
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